

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**ORLANDO A. GOERTZEN**

Claimant

VS.

**KIDRON BETHEL RETIREMENT SERVICES**

Respondent

AND

**KANSAS ASSOCIATION OF HOMES  
FOR THE AGING INSURANCE GROUP, INC.**

Insurance Carrier

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Docket No. 210,498

**ORDER**

Respondent and its insurance carrier request review of the preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore dated June 24, 1996.

**ISSUES**

The Administrative Law Judge found that claimant was not entitled to benefits for an accident that he sustained to his right knee on July 25, 1995, because claimant failed to provide timely notice for that accident. However, the Judge did find that claimant sustained a subsequent work-related injury to the right foot that developed as a combination of claimant's altered gait and his work activities. Therefore, the Administrative Law Judge awarded claimant temporary total and medical benefits relating to the stress fracture of the right foot.

Respondent requested this review and asked the Appeals Board to review the following issues:

1. Whether claimant's right foot stress fracture arose out of and in the course of his employment with respondent.
2. Whether claimant is entitled to medical treatment at the expense of the respondent and insurance carrier.
3. Whether the Administrative Law Judge properly calculated the temporary total disability rate.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, for purposes of preliminary hearing the Appeals Board finds:

Under K.S.A. 44-534a, as amended, the Appeals Board has the jurisdiction and authority to review a preliminary hearing finding of whether a worker has sustained personal injury by accident arising out of and in the course of his employment with the respondent. Likewise, the compensability issue set forth in issue No. 2, above, is subject to Appeals Board review because it also gives rise to the question whether claimant's stress fracture arose out of and in the course of his employment activities or whether it arose from some other source. However, the Appeals Board does not have the jurisdiction or authority to review the issue identified as No. 3, above, because it does not address one of the jurisdictional issues enumerated in K.S.A. 44-534a, as amended, and the Administrative Law Judge did not exceed his jurisdiction in determining the weekly temporary total disability rate.

The Appeals Board adopts the analysis and conclusion of the Administrative Law Judge that it is more probably true than not that claimant developed the right foot stress fracture as a result of his altered gait and the walking required of his employment with the respondent. This conclusion is supported both by Dr. Robert Eyster's opinion as set forth in his letter dated March 15, 1996, "that the altered gait Mr. Goertzen had as a result of the original injury to the right knee and foot did result in a stress fracture to the right foot and a subsequent posterior tibial tendon tear in the right lower extremity and would not have occurred but for the previous injuries to the knee and foot" and claimant's testimony that his job, during the period in question, often required him to walk eight hours per day. Claimant also testified that he worked with a limp up until December 5, 1995.

Based upon the entire record, the Appeals Board finds that it is more probably true than not that claimant did sustain repetitive mini-traumas to his right foot after July 25, 1995, continuing each and every day that he worked for the respondent after that date that ultimately resulted in the right foot stress fracture. Therefore, claimant has

proven that he sustained personal injury by accident arising out of and in the course of his employment with the respondent for which he is entitled to receive workers compensation benefits.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore dated June 24, 1996, should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August, 1996.

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BOARD MEMBER

c: Henry A. Goertz, Dodge City, KS  
Jeffrey A. Chanay, Topeka, KS  
Bruce E. Moore, Administrative Law Judge  
Philip S. Harness, Director